

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: J&K CONTRACTING L.L.C.	ADMINISTRATIVE CONSENT ORDER 2014-WW-12
-------------------------------------------------------------------	--------------------------------------------------------

TO: J&K Contracting L.L.C.
Matt Runge, Project Manager
1307 E. Lincolnway
Ames, Iowa 50010

J&K Contracting L.L.C.
c/o Joey T. Hoover
418 6th Ave., Ste. 200
Des Moines, IA 50309

I. SUMMARY

The Iowa Department of Natural Resources (Department) and J&K Contracting L.L.C. (J&K) hereby agree to the following Administrative Consent Order (Order). J&K agrees to cease all discharges of sediment to receiving water bodies, comply with all applicable conditions of NPDES General Permit No. 2, and pay an administrative penalty of \$7,500 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Julie Sievers
Iowa Department of Natural Resources
1900 N. Grand Ave. Gateway Mall North
Spencer, Iowa 51301
Ph: 712/732-8350
julie.seivers@dnr.iowa.gov

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
509 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-5965
aaron.brees@dnr.iowa.gov

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 503219-0034

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
J&K CONTRACTING L.L.C.

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorizes the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The Department and J&K hereby agree to the following statement of facts:

1. J&K is a construction contractor hired by the City of Storm Lake (City) to install a sanitary sewer main (the Project) along Highway 110 and along the west side of Storm Lake in Buena Vista County, Iowa. The Project was to be constructed subject to terms of National Pollutant Discharge Elimination System General Permit No. 2 (General Permit No. 2), which includes a requirement to develop and implement a storm water pollution prevention plan (SWPPP).
2. On January 14, 2013, J&K signed a Contractor Certification document for the SWPPP. The document states that J&K has read and understands the terms and conditions of the SWPPP and that J&K is required to comply with the SWPPP.
3. On May 26-27, 2013, the Project area received 9-11 inches of rain. Department Environmental Specialist Senior Julie Sievers visited the Project on May 27, 2013 and found that, due to the amount of rain, previously installed erosion control measures had been inundated. Ms. Sievers then visited with City Building Official Scott Olesen regarding site conditions and discussed needed repairs.
4. On May 31, 2013, Ms. Sievers again discussed the Project with Mr. Olesen. No action had been taken at this time to repair the damaged erosion control measures. Mr. Olesen then sent an email regarding the need for repairs to Veenstra & Kimm, Inc. (V&K), J&K, and Perficut Companies, Inc. dba Storm Water Consultants (SWC).
5. On June 3, 2013, the Department received an anonymous complaint that a contractor working on the Project was pumping dirty water into Storm Lake along Casino Road. Ms. Sievers contacted Mr. Olesen and conducted an investigation. She observed that J&K had dewatered the pipe trench running parallel to Casino Road without appropriate erosion controls in place. Sediment-laden water was entering an intake and flowing into Storm Lake. J&K was no longer pumping water upon Ms. Sievers' arrival, however sediment-laden water was still ponded around and flowing into the intake. Mr. Olesen, Matt Cruse of V&K, and John Mozena of V&K arrived and directed J&K to create

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
J&K CONTRACTING L.L.C.

earthen berms around the intakes to slow the flow of water. Mr. Olesen verbally ordered J&K to stop work and followed up with a written stop work order later in the day.

6. Later on June 3, 2013, Mr. Olesen, and Matt Runge of J&K, provided an email from Tim Huckaby of SWC, outlining erosion control plans for the site, sent prior to the complaint. Addition email correspondence between the parties raised the issue of whether the sediment that was discharged into Storm Lake actually came from the Project site. Ms. Sievers provided photo documentation of the incident to Mr. Runge and Mr. Huckaby, who then both agreed that the discharge did originate from the Project site.

7. On June 4, 2013, Ms. Sievers met with City of Storm Lake Code Enforcement Officer Bob Swanson, Mr. Mozena, Mr. Cruse, and Mr. Huckaby to discuss what erosion control measures were needed to prevent another discharge to Storm Lake. A detention basin was then constructed at the Project site, and during a June 12, 2013 visit by Ms. Sievers and Mr. Olesen, it appeared to be functioning properly.

8. No additional violations were noted through August 2014 as the Project neared completion.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Storm Lake, and the associated creeks, streams, and drainage systems flowing into it, are "waters of the state" pursuant to Iowa Code section 455B.171(37) which defines the term to include "any stream, lake, pond, marsh, watercourse, waterway, ...drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within... the state"

2. Iowa Code 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging into any water of the state. J&K violated this provision by discharging sediment to waters of the state as described in Statement of Facts paragraph 5.

3. 567 IAC 61.3(2) describes Iowa's "general water quality criteria" for all surface waters which requires that they "be free from materials attributable to wastewater discharges...producing objectionable color, odor or other aesthetically objectionable conditions." J&K's discharge, as described in Statement of Facts paragraph 5, violated this provision.

4. Iowa Code 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
J&K CONTRACTING L.L.C.

federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and 567 IAC 64.

5. Subrule 60.2 defines "Storm water" as "storm water runoff, snow melt runoff and surface runoff and drainage." It defines "Storm water discharge associated with industrial activity" to cover "the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." Number 10 under this definition specifically encompasses "construction activity including clearing, grading and excavation activities."

6. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for storm water point sources which require an NPDES permit under Section 402(p) of the Clean Water Act and 40 CFR 122.26. The NPDES General Permit No. 2 is such a permit.

7. 567 IAC 64.3(1) provides that no one shall operate a wastewater disposal system "...without, or contrary to any condition of, an operation permit issued by the director." General Permit No. 2 is "an operation permit issued by the director." J&K's discharge, as described in Statement of Facts paragraph 5, is a violation of the provisions of this permit and is therefore a violation of Subrule 64.3(1).

V. ORDER

THEREFORE, the Department hereby orders and J&K agrees to the following:

1. J&K shall pay to the order of the Department an administrative penalty of \$7,500 within 30 days of receipt of this Order. In the alternative, J&K may satisfy this monetary penalty by making a \$7,500 payment to the Lake Preservation Association For Storm Lake, Inc. and providing documentation of such payment to the Department within 30 days of receipt of this Order.
2. J&K shall cease all discharges of sediment to receiving water bodies.
3. J&K shall comply with all conditions of NPDES General Permit No. 2.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
J&K CONTRACTING L.L.C.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

ECONOMIC BENEFIT: It is unclear that any economic benefit was gained through these violations. As such, no penalty is assessed for this factor.

GRAVITY: J&K's dewatering of the pipe trench directly caused sediment to be discharged into Storm Lake. Discharge of sediment to waters of the state degrades water quality, harms aquatic life, and prevents the attainment of state water quality goals. Strict attention must be paid to erosion control at this Project given its close proximity to Storm Lake. Due to the significant impact of J&K's actions, \$1,125 is assessed per violation for this factor.

CULPABILITY: J&K was informed of the requirements of NPDES General Permit No. 2 and signed a written certification document acknowledging its duty to understand and comply with the permit and SWPPP terms. Given the proximity of the Project to a highly valued natural lake, J&K had an increased obligation to be aware of and comply with all relevant permit requirements. As such, \$1,125 is assessed per violation for this factor.

AGGRAVATING FACTORS: The City of Storm Lake, through the Lake Improvement Commission, and the Department are engaged in a major lake restoration project to remove sediment from Storm Lake. Discharge of sediment to the lake through inadequate storm water management has a direct, negative effect on these efforts. An additional \$750 is assessed for this factor.

Three violations are assessed a penalty of \$2,250 each, plus the \$750 aggravating factor, for a total penalty calculation of \$7,500.

VII. WAIVER OF APPEAL RIGHTS


Iowa Code section 455B.175, and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of J&K. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

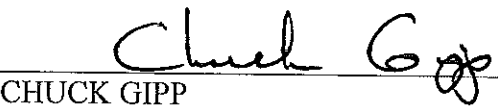
Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
J&K CONTRACTING L.L.C.

may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


Dated this 7th day of October, 2014

Matt Runge, COO
J&K Contracting, LLC


CHUCK GIPP
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13th day of October, 2014